

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT DRUMMOND,

Plaintiffs,

vs.

SOUTHWEST COUNCIL OF CARPENTERS,

Defendant.

Case No. 2:14-cv-01242-APG-GWF

ORDER

Plaintiff's Application to Proceed in
 Forma Pauperis (#1)

This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis* (#1), filed on July 29, 2014.

BACKGROUND

Plaintiff brings this action against the carpenters union for allegedly wrongfully denying him pension benefits. As the Court understands Plaintiff's complaint, he is alleging that the defendant maintains that he is ninety-six (96) hours short of "their pension". Plaintiff Drummond requests an award of \$3,000.00 a month for a period of June 6, 2006 to the present.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1). The standard in 28 U.S.C. § 1915(a)(1) for in forma pauperis eligibility is "unable to pay such fees or give security therefor." Determination of what constitutes "unable to pay" or unable to "give security therefor" and, therefore whether to allow a plaintiff to proceed in forma pauperis, is left to the discretion of the presiding judge,

1 based on the information submitted by the plaintiff or plaintiffs. *See, e.g., Fridman v. City of New*
2 *York*, 195 F.Supp.2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed.Appx. 157 (2nd Cir. 2002).

3 Plaintiff submitted the affidavit required by § 1915(a) to show that he is unable to prepay fees
4 and costs or give security for them. Therein Plaintiff indicated that he makes \$1,606.00 a month in
5 wages, and an undisclosed amount in social security and pension payments. He alleges monthly
6 expenses totaling \$826.00, which include rent in the amount of \$495.00, electricity expenses in the
7 amount of \$61.00, clothing expenses in the amount of \$100.00, gasoline expenses in the amount of
8 \$70.00 and entertainment expenses in the amount of \$100.00. Furthermore, Plaintiff indicates that he
9 has no dependants or other financial obligations. Based on the information provided, the Court finds
10 that Plaintiff is able to pay the filing fee in this case. *See Rucker v. County of Santa Clara*, 2003 WL
11 21440151 (N.D. Cal. June 17, 2003) (sufficient showing of indigency where plaintiff received \$748.42
12 per month, and that amount was exceeded by his outstanding monthly expenses and debt); *see also*
13 *Samuel v. Nat'l Health Svs., Inc.*, 2006 WL 2884795 at *1 (E.D. Cal. Oct. 10, 2006) (denying IFP
14 application where plaintiff received \$752.40 per month in Supplemental Security Income and owned a
15 van valued at \$500.00); *Matter of Anderson*, 130 B.R. 497, 500 (W.D. Mich. 1991) (earnings of \$950
16 per month insufficient to show indigency where poverty level in Michigan was \$6,620 per year); *In re*
17 *Fontaine*, 10 B.R. 175, 177 (D. R.I. 1981) (no indigency where weekly net pay of \$132, no dependents,
18 and lived with mother to whom she paid \$25 per week).

19 Based on his application, it appears that Plaintiff's income exceeds his expenses. Further,
20 Plaintiff failed to include the amount of income he receives in social security and pension payments
21 pursuant to question three. Having concluded that Plaintiff is not entitled at this time to proceed *in*
22 *forma pauperis*, the Court need not screen the complaint under 28 U.S.C. § 1915(e)(2)(B), which
23 requires the dismissal of the case at any time if the Court determines that it is frivolous or malicious or
24 fails to state a claim upon which relief can be granted or seeks monetary relief against a defendant who
25 is immune from such relief. Accordingly,

26 ...

27 ...

28 ...

George Foley Jr.
GEORGE FOLEY, JR.
United States Magistrate Judge